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TO READERS AND NEWSAGENTS.

OWING to the stringent rationing of paper supplies imposed by the Government, the Proprietors of THE SOLICITORS' JOURNAL, in common with publishers of other newspapers, periodicals, etc., will not accept the return of unsold copies after this issue. As newsagents will not, therefore, be in a position to stock copies of the Journal, other than those for which they hold a definite order, readers, in their own interests, should place an order at once, either direct with the Publishers or with their local newsagent, for the Journal to be supplied to them regularly each week.

Current Topics.

The Budget.

THE Budget, which was submitted by the Chancellor of the Exchequer to the House of Commons on Tuesday, contains several proposals of legal interest. One of these relates to s. 13 (7) of the Finance (No. 2) Act, 1939, which enables the Board of Referees to allow a substituted standard for the purpose of the Excess Profits Tax when the figures of past profits would not constitute a reasonable standard. The wording of this subsection is to be amended in order that it may properly carry out the purpose for which it was framed. Provision is to be made for concerns belonging to depressed industries or concerns which in the standard period were still in process of development, and the amendment will be designed to meet the criticism that the limitation of the subsection in ordinary cases to a percentage calculated in relation to share capital without regard to the financial structure of the company is not fair as between one company and another. As regards income tax changes are proposed to prevent the children's allowance being deducted twice over in respect of the same child where the parents are separated by divorce or agreement (see *Stevens* v. *Tirard* (*Inspector of Taxes*), 83 SOL. J. 890), to secure the charge of tax on rents which are not covered under Sched. A, and to deal with the measure of liability to tax from foreign sources and with depreciation allowance. Measures are also to be taken to deal with avoidance of estate duty. With regard to sur-tax Sir JOHN SIMON recalled that the field over which the tax operates is determined a year in advance of the year in which the rates are fixed and the tax is payable. The field of 1939–40 had already been defined in last year's Finance Act, and the Chancellor of the Exchequer said he could not justifiably interfere with that. But he could not allow his hands to be tied indefinitely in the matter, and therefore proposed to provide in the Finance Bill for the present year and in the appropriate Budget Resolution that sur-tax for 1940–41, for which the rates would not be laid down until the 1941 Finance Bill, could be charged on incomes in excess of £1,500 per annum instead of on incomes in excess of £2,000. Other proposals which may at a later stage give rise to important legal issues are the new purchase tax, the limitation of dividends of public companies and the prohibition, save in exceptional cases, of the issue of bonus shares.

The Truck Acts: Proposed Statutory Bar to Recovery.

READERS will remember that in *Pratt* v. *Cook, Son & Co.* (*St. Paul's*), *Ltd.* (84 SOL. J. 167), the House of Lords reversed a decision of the Court of Appeal (SLESSER and FINLAY, L.JJ., GODDARD, L.J., dissenting) and restored that of WROTTESLEY, J., to the effect that an arrangement whereby a workman should be paid a named weekly sum and in addition be given dinner and tea which the parties agreed were equivalent to 10s. a week, infringed the provisions of the Truck Act, 1831. As a result the plaintiff was held to be entitled to recover a substantial sum. The Home Secretary recently stated in reply to a question asked in the House of Commons that as a result of this decision a number of workpeople in various employments who had been supplied with food or other things as part of their remuneration, in some cases with specific trade union agreement, could, if the contract happened to have been cast in the form now declared to be illegal, claim to be remunerated twice over. It was observed that some claims of this kind had already been launched, and others were contemplated. It seems that no particular difficulty arises with regard to future contracts which can be made in a form complying with the provisions of the Truck Acts as interpreted by the House of Lords in the above-named case. It is not, therefore, proposed to amend the provisions of these Acts. The Government, however, consider it as necessary and proper to legislate for the purpose of preventing claims as regards the past which have no merits and which, if pursued, would tend to disturb good relations between employers and employed. Sir JOHN ANDERSON stated that it was accordingly proposed to introduce at once a Bill to bar claims under s. 4 of the Truck Act, 1831, for the payment in cash of remuneration which was in fact provided in the form of food or some other thing in those cases in which it would have been legal to contract to pay a higher nominal money wage but to make deductions from that wage in respect of the food or other thing provided. The Bill, it was said, would provide for the discharge of proceedings which had already been started, subject to such order as to costs as the court might think proper. Judgments given or settlements reached before 18th April, 1940, would not be interfered with. In answer to a further question as to the position in regard to a judgment obtained after that date and before the proposed Bill became law, the Home Secretary said that he was considering the point with legal advisers,

and that it was not free from technical difficulty. He would, however, make it clear at once that a litigant or prospective litigant would have no legitimate grievance if, when the proposed Bill became law, he found that Parliament had nullified the effect of such judgment. Sir JOHN ANDERSON stated in answer to a question addressed to him later on the same day that he recognised that certain passages in the memorandum on the Truck Acts, published by the authority of the Home Office in June, 1937, relating to exceptions as regards the provision of food and certain other things to workmen, did not accurately describe the law as interpreted by the House of Lords in the case above referred to. Steps had been taken to suspend sales of the 1937 edition, and further action would be considered in relation to the proposals for legislation which he had previously announced.

Charitable Trusts: Tax Remission.

IN answer to a question relating to tax remission on charitable gifts Sir JOHN SIMON recently stated in the House of Commons that, where a person undertook by deed to make an annual payment to charitable trustees for a period exceeding six years, such payment under the general provisions of the Income Tax Acts was admissible as a deduction in computing the payer's total income, and that it was upon the income as so computed that sur-tax (if the donor was liable to sur-tax) was chargeable. Asked whether when persons paying sur-tax at the highest scale gave donations to charities under trust deeds they were entitled to receive back 17s. 6d. from every £1 they gave, and whether the State did in fact subsidise them to that extent, the Chancellor of the Exchequer replied: "I do not think it can be called subsidising, but it is the fact that with regard to endowments entered into for over six years in the case of persons with larger incomes, they are making a contribution to public funds so much larger than that made by other persons in the lower income ranges that the endowments have a correspondingly greater effect on the Revenue."

Hardship Committees: Legal Representation.

A MEMBER of Parliament recently questioned the fairness of the regulation whereby a barrister or solicitor who is a friend or relative of an applicant before a hardship committee is entitled to be heard on the applicant's behalf, whereas a lawyer, professionally employed, can not be heard. The Minister of Labour was asked whether he was aware that this regulation placed under a disadvantage the great majority of applicants who had no friend in the legal profession, and whether, in view of the fact that professional representation by trade union officials was permitted, he would reconsider the regulation. Mr. BROWN stated in reply that all applicants might be represented by a personal friend or relative and that he was satisfied from experience of the way in which the committees worked that those applicants whose friend or relative was not a barrister or solicitor did not thereby suffer any disadvantage. No further amendment of the regulations on this point was proposed.

The War and Crime.

THE Home Secretary was recently asked in the House of Commons whether his attention had been called to the increase of robberies of all kinds and motor-car thefts at the present time, and whether he was satisfied that existing legislation was adequate in regard to the maximum penalties which could be imposed for offences of this nature during the war. Sir JOHN ANDERSON intimated that figures for the whole country were not yet available, but he drew attention to certain figures, which he had given about a month earlier, for certain offences in the Metropolitan Police District during the first six months of the war. Those figures showed, when compared with the corresponding pre-war period, some increase in shopbreaking and bag-snatching, but a decrease in cases of burglary and housebreaking and in cases of robbery or attempted robbery with violence. During the same period, as compared with the corresponding period last year, there had been an increase in the number of motor-car thefts (including taking cars without the owners' consent) recorded in the Metropolitan Police District. But the Home Secretary drew attention to the maximum penalties for these offences—ranging from penal servitude for life in the case of burglary, to imprisonment for twelve months and a fine of £100 in the case of taking a motor vehicle without the owner's consent—and he said that he had no reason to think that the existing penalties were inadequate for dealing with such offences in war-time.

Obstruction of Highway.

AN interesting legal point was involved in a question recently asked by Mr. ROSTRON DUCKWORTH in the House of Commons as to whether it was proposed to introduce legislation to secure that the common law should not apply to cases of injury to pedestrians through sand-bags on the pavement in the black-out. The Home Secretary stated, in reply, that he presumed the questioner had in mind the remedy open to persons who suffered personal injuries by reason of obstructions in the highway in circumstances which might enable them to recover damages at common law. He observed that he was not satisfied that the experience up to the present had been such as to justify legislation of the nature suggested.

Recent Decisions.

IN *Howard Farrow, Ltd.* v. *Ocean Accident and Guarantee Corporation, Ltd.* (*The Times*, 18th April), MACNAGHTEN, J., held that the claimants, road engineers, were not, under a policy of insurance, entitled to be indemnified by the respondents in respect of an action brought against them as the result of damage caused to premises by the blocking of a culvert which led to a stream overflowing its banks and was due to the negligence of the claimants' workman. The policy covered accidental damage to property happening in the course of business but excepted liability in respect of injury or damage caused by or in connection with or arising from flood. His lordship held that the exception applied.

In *Noble* v. *Southern Railway Co.* (*The Times*, 19th April) the House of Lords, reversing a decision of the Court of Appeal and that of a county court judge, held that the appellant was entitled to compensation under s. 1 (2) of the Workmen's Compensation Act, 1925, in respect of the death of her husband, a fireman in the respondents' employment, who was killed by an electric train when on his way from a locomotive depot to a station from which he had been instructed to go to another station. When he met his death the man was using a highly dangerous route, forbidden to employees, and a notice had been issued specifying the route to be taken. *Clarke* v. *Southern Railway Co.*, 20 B.W.C.C. 309, overruled.

In *Milk Marketing Board* v. *Frearson* (mentioned in *The Times* of 20th April) TUCKER, J., held that the Milk Marketing Board had not acted in excess of its powers in requiring milk retailers to make a daily return of all milk produced, bought, and disposed of by them, although the learned judge recognised that the filling up of the form was irksome to a producer-retailer because it included a record of milk used on the farm and in the household of such.

In *Knightsbridge Estates Trust, Ltd.* v. *Byrne and Others* (*The Times*, 23rd April) the House of Lords upheld a decision of the Court of Appeal to the effect that mortgagors were not entitled on the usual notice to redeem a mortgage which provided that the repayment of the principal sum of £310,000 together with interest at the rate of £5 5s. per cent. per annum should be spread over a period of forty years and be effected by eighty half-yearly instalments of principal and interest. The postponement of the right of redemption was not a clog on the equity of redemption.

Criminal Law and Practice.

UNSWORN EVIDENCE OF A CHILD.

THE rule as to the admissibility in criminal proceedings of evidence given by children of tender years is contained in s. 38 (1) of the Children and Young Persons Act, 1933, which provides: "Where, in any proceedings against any person for any offence, any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth; and his evidence, though not given on oath, but otherwise taken and reduced into writing in accordance with the provisions of section seventeen of the Indictable Offences Act, 1848, . . . shall be deemed to be a deposition within the meaning of that section . . . Provided that where evidence admitted by virtue of this section is given on behalf of the prosecution the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating him."

In a recent case in the Court of Criminal Appeal (*R.* v. *Surgenor* (1940), 2 All E.R. 249), the unsworn evidence of a child of tender years came under review in an appeal against a conviction for housebreaking. The accused had made a number of statements which, on the evidence, the jury might have been quite justified in believing to be untrue. One of those statements was a denial that he had had any foreign coins, a bag of foreign coins having been missed from the place where he was alleged to have committed the burglary. In fact, a 5 centime piece and a South African penny were found in his room.

A girl of nine years of age was called, and she said that she had noticed the appellant put a foreign coin into the gas meter, and three or four days later the gas man found a foreign coin in the meter. The girl recognised the coin and gave it to her mother, and eventually produced it. Counsel for the appellant admitted that her evidence was right after he had cross-examined her. She was not sworn before the justices, on the ground that she could not be expected to know the meaning of the oath. The recorder, on being informed of this, instead of making an investigation as to whether the child was of sufficient intelligence to justify the reception of the evidence, and understood the duty of speaking the truth, said "Very well," and received the unsworn evidence of the child. Humphreys, J., in giving the judgment of the court, said that it was wrong for the presiding judge not to make the investigation himself, and that it must not occur again, but that no harm was done by the irregularity. The child appeared to be a very intelligent child, who might and ought to have been sworn. The jury presumably accepted her evidence unsworn, and it was extremely unlikely that they would not have accepted it if she had been sworn. The child was not giving important evidence which required corroboration, but was merely a make-weight to prove what the police and her mother had proved. The appeal was dismissed.

It is important to bear in mind, in considering the effect of this judgment, that the Court of Criminal Appeal has by no means condoned either the irregularity of not investigating the question of the child's intelligence or the absence of any warning as to the necessity of corroboration. If in fact the evidence might have turned the balance against the accused, the statute is clear that it requires corroboration. In any case, under the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, notwithstanding that the court are of opinion that the appeal might be decided in favour of the appellant, they may dismiss the appeal if they consider that no substantial miscarriage of justice has occurred.

At one time the unsworn evidence of children of tender years was not admissible except in special circumstances (see *R.* v. *Powell* (1775), 1 Leach 110, and *R.* v. *Brasier* (1779), 1 Leach 199). The Criminal Law Amendment Act, 1885, rendered the evidence of a girl under thirteen years of age admissible without the oath in certain cases of carnal knowledge, and the Children Act, 1908, s. 30, enacted the law which, as amended by s. 28 (2) of the Criminal Justice Administration Act, 1914, is now repealed and re-enacted in s. 38 (1) of the Children and Young Persons Act, 1933, quoted above.

Whether an irregularity is serious enough to result in the quashing of a conviction depends to a very large extent on the facts. In *R.* v. *Davies*, 11 Cr. App. Rep. 272, on a charge of rape, the evidence of two children of tender years was of vital importance on the question of consent, and the judge did not direct the jury to that effect, and that corroboration was required under the statute. In giving judgment quashing the conviction, Lord Reading, C.J., remarked that "possibly in some cases the corroboration might be so clear and unmistakable that this court would not upset the conviction even in the absence of any such direction, but in the present case we cannot say that if a caution had been given the jury must have returned the same verdict." Following this decision a conviction for carnal knowledge of two girls under thirteen years of age was quashed in *R.* v. *Lyons*, 15 Cr. App. Rep. 144, on the same ground, and also on the ground that "no preliminary questions were put to either child by the judge in order to satisfy him that they possessed sufficient intelligence to justify the reception of their evidence, and that they understood the duty of speaking the truth."

The contrary type of case was dealt with in *R.* v. *Schiff*, 15 Cr. App. Rep. 63, where no specific direction was given by the judge on the necessity for corroboration by statute, but counsel for the defence put the point prominently before the jury, and his observations were referred to by the judge. In that case it was held that as there was in fact sufficient corroboration implicating the accused, the conviction must be affirmed. See also *R.* v. *Murray*, 9 Cr. App. Rep. 126 and *R.* v. *Gregg* (1933), 102 L.J.K.B. 126.

Again in *R.* v. *Southern*, 22 Cr. App. Rep. 6, Talbot, J., in delivering the judgment of the court (quoted in *R.* v. *Surgenor*), said: "It is too much to say . . . that it is a rule of law that if, in a case where unsworn evidence has been adduced, the judge does not call the jury's attention to the provisions of the statute, that necessarily invalidates the conviction; but it is quite clear that the judge ought to draw attention to it, because the jury will approach and ought to approach the question of corroboration more carefully, if they knew that it is required by an express statutory provision, and not merely by the ordinary rule of common sense and fairness which makes it desirable that the evidence of young persons, particularly in offences of this kind, should be corroborated." He added: "The court must not be taken as having expressed the opinion that it is legitimate to receive the evidence of a child of tender years under the provisions of the statute without some investigation by the court, in the presence of the accused and jury, whether the provisions of the statute have been satisfied."

It may be asked whether the decisions of the Court of Criminal Appeal do not to some extent nullify the strong words of the Children and Young Persons Act, 1933, that "the accused shall not be liable to be convicted . . ." If there is no corroboration of the child's evidence, there may nevertheless be ample evidence of the guilt of the accused from other sources, and the statute cannot have intended the absurdity that the mere irregular reception of the unsworn evidence of a child should entitle an accused person to an acquittal where there was satisfactory evidence of his guilt. What the jury might have decided in the absence of a given piece of evidence is a difficult question in many cases, but there are cases in which the question can be answered, and it is those cases in which the Court of Criminal Appeal is called upon to consider whether or not there has been a miscarriage of justice.

Unlighted Obstructions.

An interesting appeal from New Zealand dealing with an aspect of negligence by motorists which, as counsel stated, "involved a principle of almost every-day concern in the courts of this country, New Zealand and elsewhere," came before the Judicial Committee of the Privy Council recently (*Stewart* v. *Hancock* (5th April)). The appellant was riding a motor cycle, with a good light, along a main road towards Auckland at night time in December of 1935, when he collided with the respondent's unlighted stationary motor car, and sustained injuries. In his action to recover damages from the respondent the jury awarded him £1,259 8s. 2d., which was upheld by the trial judge after subsequent legal argument on the submission by the respondent that there should have been a non-suit on the grounds (*inter alia*) that the appellant was guilty of contributory negligence in failing to keep a proper look out, and in proceeding at such a pace as would not enable him to stop in time to avoid anything which might have been on the road. The respondent's appeal was allowed by the Court of Appeal of New Zealand by a majority of two to one, the majority holding that judgment should have been entered for the respondent (defendant) on the ground that it was conclusively proved that the proximate cause of the accident was the appellant's own negligence, and that the verdict of the jury was so unreasonable as to be perverse. The question which would appear to emerge is whether a motorist who collides at night with an unlighted stationary object must invariably be found negligent. The object might, for example, as was pointed out in the argument, be an unfortunate pedestrian, and in such a case, black-out difficulties excepted, a motorist might well experience some trouble in displacing the obvious inference of negligence. There is, however, no cast-iron rule of law that the motorist must necessarily be guilty of negligence in such circumstances. As Mr. Justice Macnaghten said in *Tidy* v. *Battman* [1934] 1 K.B. 319, at p. 320, at night time the visibility of an unlighted obstruction to a person driving a lighted vehicle along the road must necessarily depend on a variety of facts, such as the colour of the obstruction, the background against which it stands, and the light coming from other sources; "It cannot, I think," he added, "be said that where there is an unlighted obstruction in the roadway a careful driver of a motor vehicle is bound to see it in time to avoid it and must therefore be guilty of negligence if he runs into it." That view, which had been approved by the Court of Appeal in England, was agreed with by Mr. Justice Ostler in the Court of Appeal of New Zealand, when he pointed out that negligence being a question of fact, not of law, each case must depend upon its own facts, and that "there is no rule of law which in every case disqualified a motorist from recovering damages where he had run into a stationary unlighted object." This summary of the law applicable to such cases as the present has now received the unqualified approval of the Judicial Committee of the Privy Council, presided over by the Lord Chancellor. In the result the Board, in a judgment delivered by Lord Roche, after examining the facts and the evidence, restored the judgment in favour of the appellant for the £1,259 8s. 2d. This concise but important ruling on negligence may now be taken as finally established, and perhaps few would care to quarrel with it, but one cannot but feel some sympathy with the argument advanced for the respondent that if a motorist is driving at such a pace that he can pull up well within the limits of his vision and is keeping a proper look-out he cannot in clear weather collide with a stationary unlighted obstruction; that he is not entitled to assume that because there is nothing on the road with a light on it there is nothing there at all.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, 16th May, at 10 a.m.

Company Law and Practice.

Statutory Requirements with regard to Accounts and Balance Sheets.—I.

Many of the provisions contained in the Companies Act, 1929, relating to the keeping of books of account and the making up of balance sheets and profit and loss accounts appeared for the first time in that Act; the earlier Acts did not, in terms, require the keeping of accounts or the preparation of balance sheets and profit and loss accounts, though they provided (see, now, s. 134 of the 1929 Act) for the making of a report by the auditors on the accounts and balance sheet, a provision which by implication required that there should be annually an audit of the accounts resulting in a balance sheet (*Newton* v. *Birmingham Small Arms Co., Ltd.* [1906] 2 Ch. 378, at p. 387, *per* Buckley, J.). The keeping of accounts and the making out of a balance sheet and profit and loss account were treated as matters to be dealt with expressly by the articles (compare cls. 103–108 of the 1908 Table A); but they are now the subject-matter of express provision in the 1929 Act (see ss. 122 *et seq.*). It has from time to time been suggested that the provisions introduced into the 1929 Act in relation to these matters do not go far enough in their requirements; however this may be, it will, I think, be not without some interest and value to consider the relevant provisions of the Act.

Section 122 provides that every company shall keep proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

These books are to be kept at the registered office of the company or at such other place as the directors think fit and are to be open to inspection by the directors. A director who fails to take all reasonable steps to secure compliance by the company with these provisions or has by his own wilful act been the cause of any default by the company is guilty of a punishable offence.

This express provision for the keeping of books of account is not quite the end of the matter so far as the Act is concerned; for s. 274, which is also a new section, imposes penalties on officers of the company responsible for any failure of the company to keep proper books of account during the two years preceding the winding up of a company. This section only comes into operation if a company is wound up, but clearly its provisions must be borne in mind while the company is a going concern; and, curiously enough, its requirements as to the books of account to be kept and the persons responsible for seeing that they are kept differ from those of s. 122. Proper books of account mean, for the purposes of s. 274, "such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified." The possibility of liquidation within two years cannot always be discounted, and it would seem accordingly that the law, in effect, requires books of account to be kept with respect not only to the matters specified in s. 122, but also to those mentioned in s. 274. Moreover, whilst liability under s. 122 is confined to directors, under s. 274 every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company is liable to imprisonment unless he shows that he acted honestly or th a

in the circumstances in which the business of the company was carried on the default was excusable. Nor is the penalty under the two sections the same.

So much for the books of account to be kept. We come next to the provisions of the Act relating to the profit and loss account and the balance sheet. The first profit and loss account must be laid before the company in general meeting not later than eighteen months after the incorporation of the company; subsequently such an account must be laid before a general meeting at least once in every calendar year. The account must be made up to a date not earlier than nine months before the date of the meeting, or twelve months in the case of a company carrying on business or having interests abroad: these periods may for special reasons be extended by the Board of Trade in the case of any company.

The Act does not define the expression "profit and loss account," nor does it specify particular items which are to be included in that account, except that among the matters which s. 128 (1) requires to be contained in the accounts to be laid before the company in general meeting is the total remuneration of the directors; and this item would normally be brought into the profit and loss account, and this would satisfy the requirements of s. 128 (1) on the point. The figure of remuneration must include all fees, percentages or other emoluments paid to or receivable by the directors by or from the company or any subsidiary company, and for this purpose "emoluments" is defined to include fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office. But the necessity of disclosing the remuneration of directors does not apply in relation to a managing director, and in the case of any other director who holds a salaried employment or office the figure of the remuneration of the directors need not include any sums paid to him otherwise than by way of director's fees.

As regards the balance sheet, by s. 123 (2) the directors are responsible for the making out in every calendar year and the laying before the company in general meeting of a balance sheet as at the date to which the profit and loss account is made up. Again the Act does not, I think, define balance sheet nor does it prescribe the precise form which it is to take, but there are provisions that certain matters are to be contained in the balance sheet, and these provisions are to be found not only in the fasciculus of sections (ss. 122 *et seq.*) dealing with accounts, but also in other sections relating to particular matters, information on which is required to be disclosed by the balance sheet. In addition the Act requires certain reports and statements to be attached to the balance sheet. I propose to mention first the various matters which the Act requires to be contained in the balance sheet, and then the reports and statements which must be attached thereto.

Contents of the Balance Sheet.—Every balance sheet must contain a summary of the authorised and issued share capital, the liabilities and assets, together with such particulars as are necessary to disclose the general nature of the liabilities and assets and to distinguish between the amounts respectively of the fixed assets and the floating assets; and it must state how the values of the fixed assets have been arrived at. If any liability is secured on the assets otherwise than by operation of law the balance sheet must state that the liability is so secured, though the assets charged need not be specified. The following items, so far as they are not written off, must be shown under separate headings:—

(1) Preliminary expenses.

(2) Expenses incurred in connection with any issue of share capital or debentures.

(3) The amount of the goodwill and of any patents or trade marks, if this amount is either shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract of sale of property to be acquired by the company, or from any documents relating to the stamp duty payable in respect of such a contract or of the conveyance of such property.

The above requirements, or most of them, will affect every company's balance sheet; and I must defer till next week the consideration of other particular items required to be shown in the balance sheet in cases where the assets or liabilities of the company comprise such items.

(*To be continued.*)

A Conveyancer's Diary.

Disappearance.

When an owner of property, whether legal or equitable, disappears a very awkward state of affairs arises. If he is not known to be dead, there is no ground on which his executors or administrators can take over the property vested in him for a legal estate and there is no ground on which the trustees of any property to which he is entitled can pay or transfer the property in question to the persons entitled if he is dead.

After a considerable period of time these difficulties can be got over, but in the interval there is nothing to be done. If he has made an order for payment of his dividends to a bank, they will go on being paid and there will be no one to draw on the bank account. If trustees are paying him income directly, the best thing for them to do is simply to accumulate the income. And in the meantime there is no means at all of transferring property which is vested in him at law.

Once there is a good chance that he is dead, owing to his non-appearance for a substantial time, it is possible to approach the Probate Court with a view to taking out probate, if he has left a will, or letters of administration, if he is supposed to be intestate. An executor or administrator cannot obtain probate unless he is prepared to swear that he believes the testator to be dead and is also prepared to swear when he died. It is this rule which is the insuperable objection to getting probate in the early stages after the disappearance of the person in question. Later, however, it is possible to apply to the court for leave to swear that the testator has died on or after a certain date. The application is made on motion and the applicant must, of course, put all the facts in evidence. It seems that the application will not be granted unless or until advertisements have been inserted in suitable publications asking for him to appear. For example, *In the goods of Robertson* [1896] P. 8, the application was made at the end of 1895: the alleged deceased had emigrated to Australia in 1863 and had ceased to correspond with his family in 1870. The estate was only about £160, but the court refused to dispense with advertisements. Therefore, it will always be prudent for the applicants to insert advertisements before or during the proceedings. There is a general superstition that an application for leave to swear death will be granted after nothing has been heard of the testator or intestate for seven years. This rule may give a guide where there are no circumstances at all to be brought to the notice of the court other than that the person has disappeared, but it gives way to circumstances. For example, *In the Estate of Walker* [1909] P. 115, the deceased was supposed to have fallen overboard off a cross-channel steamer on the night of 13th May, 1905. Nothing had been heard of him since then and there was reason to suppose that he might have wished to disappear. In the circumstances, however, the court allowed his bank, to whom he was indebted in respect of an overdraft, to swear to its belief in his death. The case was a curious one, because his own family said they thought he was alive and because no advertisements were ordered. The order was made as early as 1st February, 1909. Similarly, *In the Goods of Matthews* [1898] P. 17, an application was made by a person entitled, under the will of the alleged deceased, for leave to depose that his death had occurred on or since 24th November, 1894. On that date he disappeared from his home in

Wandsworth and was never heard of again. The neighbourhood had been searched, the register of deaths had been searched, the local relieving officer and superintendent of police had been communicated with and advertisements had been published in five newspapers. The report discloses no reason whatever for the deceased to have wished to disappear. The application was granted on the 22nd November, 1897, just under three years from the last date at which he had been heard of. The learned President put his decision on the ground that the inquiries " seem to have been very ample." This case, therefore, suggests that if there is no reason for the deceased to wish to disappear and if very elaborate inquiries are made, the period may be a great deal less than seven years. For this reason it will often be desirable to make inquiries and insert advertisements before the proceedings are launched. I should think it very doubtful whether an application made after a short period would be successful if the inquiries were only made after it was started.

Of course, the position is rather different if the person in question has a good reason for disappearing or has indicated that he means to disappear. For example, a person who disappears when a warrant has been issued against him might very well not be dead after many years, and the mere fact of nothing having been heard of him would not be sufficient to justify the application. Similarly, a husband who leaves his wife, saying that he has had enough of it and that he means to make a start somewhere else, might very well not be presumed to be dead on the evidence that his wife had heard no more of him, as she would be the very last person to do so.

This last point brings us to a very curious position created by the Matrimonial Causes Act, 1937. By s. 8 (1) of that Act it is provided that " any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage." Down to this point the new section exactly squares with the existing practice regarding leave to presume death. On the other hand, s. 8 (2) provides that " in any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved." This, then, is an entirely new departure from the point of view of marriage law. Before 1938 a person who re-married in the circumstances contemplated by s. 8 (2) would have a complete defence against a prosecution for bigamy by reason of s. 57 of the Offences Against the Person Act, 1861. But such a person could not have got a positive decree of dissolution of marriage and, accordingly, if the other spouse re-appeared, such a person's second marriage would be null and his or her issue by the second marriage would be illegitimate. But how does s. 8 (2) fit in with the property rules regarding leave to presume death? In *Parkinson* v. *Parkinson* [1939] P. 346, the petitioner asked for a decree of dissolution under s. 8. The marriage took place at Burnley in August, 1919. In July the parties executed a separation deed and, in fact, separated. In 1928 they met by accident in a street in Burnley, and in 1938 advertisements were published under the order of the Registrar. Both parties were young: they had both gone their own ways voluntarily and in the nature of things there was no reason at all to suppose that the wife who had disappeared was dead. There was no provision in the separation deed for any sums to be paid to her by way of maintenance, and therefore there was no reason whatever why she should communicate with her husband. But as she had not been heard of for ten years and as there was no other evidence, Bucknill, J., decided that he ought to make a decree. The interesting point is what he would have done if he had simultaneously been confronted by a motion for leave to swear death brought before him in his other capacity as a probate judge. On the facts as stated there could be no reasonable chance of such an application succeeding under the law which existed before 1938. The question, and I think a difficult one, is whether s. 8 (2) of the Matrimonial Causes Act has altered the general law. I do not think it could really be supposed to have altered the law in all cases, but I am inclined to think that it has altered the law where the person in question is married and the application for leave to swear death is made by his or her spouse, who in a parallel proceeding in the very same division of the High Court could get, for matrimonial purposes, a decree of presumption of death and dissolution consequential upon it. It can hardly be that a person is matrimonially dead but alive for purposes of property.

Where the alleged deceased is entitled under a trust, the trustees must, of course, accumulate the trust fund for a reasonable period in case he returns. If he does not return for a long time, they can go to the Chancery Division and ask for an order under *Re Benjamin* [1902] 1 Ch. 723, giving them permission to deal with the estate on the footing that he is dead. The same considerations apply to this decree as applied to the decree in the Probate Division. But in this case it is usually necessary to ascertain the date as from which the person is to be supposed to be dead. As there is no evidence when he died, this point, of course, has to be decided by some rule of law: the rule of law is that the trustees are to distribute on the footing that he died directly after he was last heard of. Once the Chancery Division has decreed that he is to be presumed dead, it becomes necessary for the persons who would have a claim if he had been alive to prove their case. Those persons are not in a position to prove that he was alive at any date beyond the date when he was last heard of, and any claims which would require proof of his surviving the period when he was last heard of will fail. The authority for the foregoing proposition is *Re Benjamin* itself and *Re Walker*, L.R. 7 Ch. 120. A somewhat similar point arose and was similarly disposed of in *Re Aldersey* [1905] 2 Ch. 181.

Landlord and Tenant Notebook.

Letting " for the Duration."

In the course of a paper read recently to the Auctioneers' and Estate Agents' Institute, Colonel C. C. O. Whiteley recommended that new tenancies of premises, if granted, should specify clearly that the rents were subject to revision on a particular event, which should be definitely named. From the short report published in *The Times* of 20th April, it does not appear that the paper went into the question how this object was to be carried out, which may well have been outside the scope of the subject. It is, however, notorious that many landlords are anxious to let properties either on the lines suggested or " for the duration of the war "; indeed, I have since learned that a London theatre was recently let for " the duration plus two years," but I do not know how. The problems which face the draftsman are two; how to phrase or qualify the habendum and how to fix the particular event.

The danger of treating these matters too lightly may be illustrated by quoting a short passage from the judgment of Brown, J., in *Say* v. *Smith* (1564), Plow. 269: " Every contract sufficient to make a lease for years ought to have certainty of three limitations, viz., in the commencement of the term, in the continuance of it, and in the end of it . . . and words in a lease, which don't make this appear, are but babble."

As will presently appear, courts are now inclined to take a broader view when it comes to construing documents of this

kind than was taken in Elizabethan times; nevertheless, a short account of the point at issue in *Say* v. *Smith* and of the grounds of the judgment will not be out of place. The action was a replevin action, the distress levied purporting to be distress *damage feasant*. The plaintiff laid claim to a tenancy of the land on which his cattle had been caught grazing, alleging that a predecessor in title had been granted a lease for ten years in consideration of 10,000 tiles, renewable every ten years for a similar consideration but subject to an annual rent: "from ten years to ten years continually and ensuing out of the memory of man paying therefor the yearly rent of £4 16s. 6d.," and the tiles. What matters for present purposes is that Weston, J., in dismissing the action, expounded the law as follows: "If I make a lease for so long as J.S. who is imprisoned for hunting shall be in prison for the same by order of law, this is as much as if I had made a lease for two years, for so long he shall be imprisoned by the statute. But if a lease is made until J.S. who has execution of a statute merchant is satisfied the duty for which he has sued execution . . . this is not a good lease . . . for it is not certain how long the years shall endure, viz., for six years or for twelve or twenty years; so that the time of the end of the lease is utterly uncertain, and therefore it cannot be called a term of years, for *terminus* contains certainty."

Now it is not certain how long the present war shall endure, and the time of the end of a lease "for the duration" is consequently utterly uncertain, and according to the Court of Queen's Bench which tried *Say* v. *Smith*, the words in question would be but babble. Progress in the matter of carrying out the true intentions of the parties has, however, since been made, and a case decided during the Great War shows what can be done. In *G.N. Ry. Co.* v. *Arnold* (1916), 33 T.L.R. 114, it appeared that the plaintiffs, holding a lease of a certain house, purported to let it to the defendant "for the period of the war at a weekly rent of £3 5s. payable weekly," having previously written a reassuring letter to the effect that they had no intention of ever giving a week's notice. The plaintiffs' own lease forbade sub-letting and it was when the head lessors had complained that they sued for possession. It was argued that the tenancy was either void or weekly or at will, but when counsel invoked Sheppard's "Touchstone" and Bacon's "Abridgment" he was stopped. In his judgment for the defendant, Rowlatt, J., pointed out that if a lease had been granted for 999 years, determinable with the conclusion of the war, it would have been perfectly good. The law was ingenious enough to get round the difficulties referred to and by hook or by crook the defendant should have what he had bargained for. No formal rectification of the instrument was, however, ordered.

This decision shows how to set about granting a lease "for the duration." Rowlatt, J.'s assumption that the Great War would last less than 999 years from 1916, when the tenancy with which he was dealing commenced, proved to be accurate; but, while no more has been heard of *G.N. Ry. Co.* v. *Arnold*, subsequent legal history has shown that "the conclusion of the war" as a *terminus ad quem* leaves much to be desired or at all events much to argue about in point of certainty. This draws attention to a difficulty which obtains not only when an option to break is to be drafted but also when a reddendum providing for an increase of rent, as suggested in Colonel Whiteley's paper, is called for. The paper in question was mainly concerned with the necessity for reducing rents while war conditions adversely affected tenants' finances, the reader referring to West End shops in particular. Now if a shop had been let in 1916 at a rent to be increased on the "conclusion of the war," it might well have been argued that by applying the "true intention" test the increase should take effect at the Armistice, 11th November, 1918, when a period of renewed prosperity set in. But shortly *after* that date Parliament passed a measure known as the Termination of the Present War (Definition) Act, 1918, authorising His Majesty in Council to declare what date was to be treated as the date of the termination of the *present* war, and providing that that war should be treated as having continued to and ended on that date for the purposes not only of statutory provisions, but also for that of any provision in any *contract*, deed, or other instrument referring, expressly or impliedly, and in *whatever form of words*, to the present war or the present hostilities.

I need not pursue the point, but may now observe that some recent legislation has anticipated similar difficulties. The Courts (Emergency Powers) Act, 1939, concludes with a provision that it shall continue in force until such date as His Majesty may by Order in Council declare to be the date on which the emergency which was the occasion of the passing of the Act came to an end; the Rent and Mortgage Interest Restrictions Act, 1939, commences with a provision continuing the principal Acts until six months after such date as His Majesty may by Order in Council declare to be the date on which the emergency, etc. Both enactments were passed on the same day and it is safe to assume that the emergencies are identical. So when letting "for the duration," one can adopt the device of letting for a long term but reserving a power to determine on or at a stated interval after the making of an Order in Council contemplated by one of the above statutes. An increase of rent can be provided for on the same lines.

The paper which I have cited, while concerned largely with business premises, did point out that shareholders in companies owning flats must expect very little in the way of dividends for some time to come. Now letting a flat for the duration of the war—at all events an unfurnished flat—is a different proposition, for few flats are outside the scope of the present Rent Act, and the "until six months" mentioned above will remind those of us who have long memories of the concluding subsection of the 1915 Act which ran: "This Act shall continue in force during the continuance of the present war and for a period of six months thereafter *and no longer* . . ." Indeed the only possible means by which a flat within the new limit can become decontrolled appears to be by the grant and acceptance of a tenancy for not less than two years, the acceptor being the sitting tenant and not a new one; for s. 2 of the 1923 Act is not named in the First Schedule to the 1939 enactment. While if an increase of rent be now agreed on the lines suggested, the position is as follows: By virtue of the above-mentioned First Schedule and s. 12 (1) (*a*) of the 1920 Act, the standard rent will be the rent at which the flat was first let after 31st August, 1939. It is true that a proviso makes the maximum rent the standard rent when a dwelling-house is let at a progressive rent; but there is an observation by Bailhache, J., in *Goldsmith* v. *Orr* [1920] W.N. 81, 250 (C.A.), to the effect that a rent definitely increased once was not a progressive rent for these purposes, while it was held in that case that increases which took effect after the commencement of the relevant statute were invalidated.

Our County Court Letter.

THE CONTRACTS OF DOMESTIC SERVANTS.

In a recent case at Sevenoaks County Court (*Bedbrook and Wife* v. *Ridsdel*) the claim was for £11 3s. 4d. as wages due under a contract of service. The plaintiffs were a butler and a cook-housekeeper respectively, and their case was that they were employed by the defendant from the 5th July, 1939, at £150 per annum joint wages, with 10s. a month to the male plaintiff as a clothing allowance. The plaintiffs were also allowed free board-residence, laundry and garage. Being dissatisfied with their position, the plaintiffs gave a month's notice on the 29th August, but this was withdrawn on the defendant agreeing to pay the plaintiffs 5s. a week extra, in the absence of a kitchenmaid. On the 3rd September, owing

to the outbreak of war, the plaintiffs were asked to look for another situation. A discussion took place on the 8th September, at which it was arranged that the plaintiffs should leave on the 12th September, subject to their wages being paid up to the 1st October. It was also agreed that the plaintiffs should be paid 3s. per day per person as board wages from the 12th September to the 1st October. The plaintiffs accordingly left on the 12th September, but, on the 11th September, a letter had arrived from the defendant's solicitor to the effect that the plaintiffs could remain until the 1st October, but, if they preferred to leave earlier, they would only be paid to the date of departure. The plaintiffs having left on the 12th September, did not obtain another situation until the 18th October. The amount claimed comprised wages due from the 5th September to the 1st October; £5 14s. for board wages; 9s. for clothing allowance; and a sum for insurance stamps. The defendant's case was that, after she had withdrawn her notice, she agreed that the plaintiffs should stay on, on certain terms, but they terminated their employment against her wish. His Honour Judge Sir G. B. Hurst, K.C., held that no contract, as claimed by the plaintiffs, could be inferred from the informal understanding arrived at on or about the 9th September. Judgment was given for the defendant, who did not ask for costs. A sum of £3 6s. 8d., paid into court by the defendant, was ordered to be paid out to the plaintiffs.

EQUITABLE MORTGAGE.

In *Morgan* v. *Tyler*, recently heard at Hay County Court, the plaintiff, as executrix of her late father, claimed £200 as money lent; a declaration that she was entitled to an equitable mortgage on a freehold farm; an order for sale, and all necessary and proper directions. The plaintiff's case was that the testator, in August, 1921, had advanced £200 to the defendant, who had deposited the deeds of the farm as security for the loan, and interest at 5 per cent. The principal, and interest now amounting to £145, was still outstanding. Alternatively, the plaintiff claimed against the defendant, as maker of a promissory note, dated the 2nd September, 1921, and still unpaid, £200 with £180 interest, less £35 paid. The net amount due was thus £345, of which £145 was abandoned. The defendant's case was that, having approached her bank manager, she was put in touch with the deceased, who advanced the money. The transaction was put through at the bank, where the defendant deposited her deeds, and had received the loan. The manager acted for both parties, and the defendant had paid various sums by way of interest, but was given no receipts. By consent, His Honour Judge Roope Reeve, K.C., ordered the payment of the £200 and £50 agreed interest. A declaration was made that the plaintiff was entitled to an equitable mortgage on the farm as security for the above sums, and also the plaintiff's taxed costs. The defendant would be allowed six months for the payment of the principal, interest and costs. If the amount were paid within that period, the plaintiff would be required to deliver up the title deeds to the defendant. If the amount were not paid within six months, the property would be sold forthwith out of court. The plaintiff was allowed costs on Schedule C.

UNIVERSITY COLLEGE, EXETER.

Summer School in Law.—3rd to 17th August, 1940.

The school, though primarily intended for law students, especially articled clerks, will not be restricted to such students. Courses of lectures will be given on the Law of Contract, the Law of Torts, the Law of Real Property, and Public Law.

The school will be under the direction of Mr. J. Griffith Morgan, M.A., LL.B., Barrister-at-Law, Director of Legal Studies.

Accommodation will be in the College Halls of Residence. Tuition fee (fortnight), £3 3s.; registration fee, 10s. 6d.; Hall of Residence (a week) £3 (single room), £2 10s. (shared room).

Further particulars from Summer School Secretary, University College, Exeter.

Reviews.

Law for Hospital Authorities. By Captain J. E. Stone, M.C., F.S.A.A., F.R. Econ. S. With a Foreword by The Rt. Hon. Lord Sankey, P.C., G.B.E., and Introduction by The Rt. Hon. Lord Cozens-Hardy, D.L. 1940. Demy 8vo. pp. xix and (with Index) 488. London: Faber & Faber. Price 30s. net.

This book is an expansion of the chapter on hospital law which appeared in the first and second editions of the same author's "Hospital Organisation and Management." The description of the present publication as an up-to-date legal guide for voluntary and municipal hospital authorities, and their officers, appears to be amply justified. Patients and their advisers will derive invaluable guidance from the forty-six pages devoted to Chap. IV, viz., "Liability of Hospitals for Wrongs (Negligence, Accidents, etc.)." The number of cases cited has been reduced to a minimum, viz., sixty-six, and those are dealt with in narrative form in the text. The dates of the decisions are given, thereby enabling a lawyer to trace them without difficulty in the various law reports. No aspect of the subject appears to have been left untouched, and respectful concurrence is expressed with the statement in the foreword that this one volume is a veritable "Encyclopædia of Hospital Law."

A.B.C. of War-Time Law. By Robert S. W. Pollard, Solicitor. Legal Edition. 1940. pp. 130 and (with Index and Appendix of Authorities and Notes) 26. London: Hamish Hamilton (Law Books), Ltd. Price 2s. 6d. net.

This book is written in question-and-answer form, and is intended as a short cut through the maze of war-time law. A previous edition was designed and written for laymen, but this edition contains an appendix of authorities and notes. It may therefore be confidently recommended to lawyers and to officials of the government and of local authorities, many of whom have already appreciated the merits of the popular edition.

Books Received.

The New County Court Practice, 1940. By His Hon. Judge Edgar Dale, N. P. Shannon, of Gray's Inn, Barrister-at-Law, Bruce Humfrey, Registrar of Croydon and Redhill County Courts, and Charles Challen, of Gray's Inn, Barrister-at-Law (Editor for Admiralty Matters). 1940. Large crown 8vo., pp. cclxxxv, 3504 and (Index) 244. London: Butterworth & Co. (Publishers), Ltd. Price 45s. net (thick); 50s. net (thin).

Loose-Leaf War Legislation, 1940. Part 2. Edited by John Burke, Barrister-at-Law. London: Hamish Hamilton (Law Books), Ltd. Price 5s. per part net.

Stock Exchanges, London and Provincial, Ten-Year Record of Prices and Dividends. 1930–1939 inclusive. Compiled by Fredc. C. Mathieson & Sons. Thirty-second issue. 1940. Super royal 8vo. pp. (with Index) 594. London: Fredc. C. Mathieson & Sons. Price 20s. net.

A Kitchen Goes to War. A Ration-time Cookery Book with 150 recipes contributed by famous people. pp. 115. London: John Miles, Ltd. Price 6d. net. (War Charities receive a royalty on every copy sold.)

Jail Journey. By Jim Phelan, author of "Lifer." 1940. Demy 8vo. pp. viii and 384. London: Secker & Warburg, Ltd. Price 12s. 6d. net.

Supplement to Tables of Tax on Net Income, showing (1) Tax applicable to Free of Tax Dividends at rates of tax from 6s. 1d. to 7s. 6d. in the £, and (2) Rates for Relief in respect of Dominion Income Tax for the year 1939–40 and the year 1940–41. London: H.M. Stationery Office. Price 1s. 6d. net.

To-day and Yesterday.

LEGAL CALENDAR.

22 APRIL.—On the 22nd April, 1785, "during the sitting of the Court of King's Bench in Westminster Hall, the sky-light over the Court was by some accident broken and the glass with some rubbish fell among the Judges which on the sudden put the whole Court in disorder. In the first surprise it was feared that part of the roof had given way and the panic spread as rapidly as if the Hall had been on fire. By everyone pressing to get out some were hurt but none materially."

23 APRIL.—On the 23rd April, 1700, the Council of Lincoln's Inn decided that "John Hungerford, Esq., a barrister, is hereby expelled from the Society for twice breaking a padlock off his door and also for saying of Eldred Lancelott, Esq., one of the Benchers, who attended to see to the padlocking, 'Mr. Lee is a rascal and I will break his head if I can meet him abroad.' His chamber shall be seized and sold and he has seven days allowed him to remove his goods."

24 APRIL.—On Easter Sunday, 1555, there was a great disturbance at St. Margaret's, Westminster, when a renegade monk of Ely, who had deserted the cloister to marry, attacked one of the priests there with a knife, wounding him seriously in the hand and in the arm. Authority decided to make the punishment fit the crime and besides condemning him to death decreed that the hand that struck the blow should be cut off. The latter part of the sentence was carried out at Westminster on the 24th April, 1555.

25 APRIL.—On the 25th April, 1862, the Court of Probate heard Dr. Smethurst's action to establish the will made in his favour by Isabella Bankes, whom he had been convicted of murdering.

26 APRIL.—On the 26th April, 1787, fifteen people were hanged on the platform outside Newgate Gaol. Eight died for housebreaking, four for street robberies, one for forgery, one for coining and, a maid who had set fire to her master's house, for arson. The futility of indiscriminate capital punishment was already beginning to cause some alarm, but, wrote someone, "nothing will rouse the spirit of reformation till banditties are formed too numerous and to dangerous for the civil power to attack."

27 APRIL.—The problems arising from intervention in other people's quarrels are not peculiar to this generation. In the early eighteen-thirties civil war was raging in Portugal between two claimants to the throne, Dona Maria and Dom Miguel. Which represented the lawful government partisans may decide for themselves. Into this dispute an Englishman made a picturesque and important incursion. Admiral Sir Charles Napier was offered command of Dona Maria's fleet and, under the name of Carlos de Ponza, went out to Portugal. His ships were not numerous. They were adequately manned by a thousand officers and ratings, mostly English, but he won a resounding victory over a numerically superior force, was raised to the Portuguese nobility and became a national hero. A sequel to his exploits was the case of *Dobree* v. *Napier*, begun in the Common Pleas on the 27th April, 1836. The plaintiff was the owner of a British ship captured by him while landing munitions for Dom Miguel and later condemned by Dona Maria's courts a lawful prize. It was now held that his breach of the Foreign Enlistment Act gave the plaintiff no cause of action against him.

28 APRIL.—One of the meteoric dictators that history reveals to us was Johan Struensee. From being court physician to the King of Denmark he raised himself to the highest position in the state. During the ten months that he held absolute power he made 1,069 decrees. He dismissed wholesale the staffs of the public departments and changed the administration of the law without regard to national customs. At last the general ill will brought about his overthrow. On the 28th April, 1772, he was executed before an immense crowd.

THE WEEK'S PERSONALITY.

When Dr. Thomas Smethurst succeeded in establishing the will made in his favour by the woman whom he had been convicted of poisoning, the final touch was put to a case which Lord Chief Baron Pollock, who had condemned him to death, had described as one of the most remarkable that he remembered. When he stood in the dock at the Old Bailey, the little insignificant doctor with his reddish-brown moustache was fifty-four years old. Thirty years before, he had married a lady twenty years his senior, with whom he lived contentedly till 1858. Then he met Miss Isabella Bankes. She was possessed of considerable charms and some means, but he made so rapid a conquest that they were married in December. On the 27th March, 1859, she was taken ill. On the 30th April, Smethurst brought a solicitor a draft will in his handwriting whereby she left everything to him. This was duly engrossed and executed and, on the 3rd May, the lady died. Poison was found in the body and the doctor was tried for murder, but the illness of a juryman broke off the proceedings. At his second trial he was convicted. However, the medical evidence had been so contradictory that the authorities eventually decided that there was sufficient doubt of the prisoner's guilt to warrant the grant of a free pardon. On a charge of bigamy Smethurst was subsequently convicted and sentenced to a year's hard labour. After that he was free to prove the will.

REPORT ON REPORTS.

The Law Reporting Committee have at last hatched the report on which they have been sitting for so long and the bird which has emerged is not one of very startling plumage. It is, however, reassuring to know that when all the pros and cons have been carefully balanced against each other the various temptations to embrace some other system offer no real prospect of improvement on the present practice. Most of the complaints considered are probably as old as law reporting itself, particularly the criticisms of the accuracy of certain reports. Thus, in *Weld* v. *Rumney* (1650), Style 318, Mr. Justice Twisden, then at the Bar, was reported as having submitted to the court an argument which he subsequently repudiated from the Bench, saying there was "not one word of it true." It was the same reporter who in his record of the case of *The Protector* v. *Buckner* apologised for not setting down what Chief Justice Glyn had said because having taken cold he could not distinctly hear him. Those were the days of the personal touch in law reporting when the reporter might note that the Lord Chancellor smiled as he said something, or that "Twisden, in furore observed . . . ".

SOME PROBLEMS.

The reporters of an earlier time would not all have agreed with the insistence of the Committee on the point that justice must be public. When Norman French was ousted from our law proceedings, Style wrote in the preface to his reports: "I have made these reports speak English, not that I believe they will be thereby more generally useful, for I have been always and yet am of opinion, that that part of the common law which is in English hath only occasioned the making of unquiet spirits contentiously knowing, and more apt to offend others than to defend themselves; but I have done it in obedience to authority." As to the problem of superfluous reporting, this has long been felt not only in England but also in the United States. Thus, in *Watkins* v. *Crouch*, 5 Leigh 530, Mr. Justice Carr said: "I have cited no cases in support of this opinion, not that I have not read and considered and puzzled myself with the multitude that were commented on in the argument, but because, finding them like the Swiss troops fighting on both sides, I have laid them aside and gone upon what seems to be the true spirit of the law."

Notes of Cases.

House of Lords.

Edinburgh Collieries Co., Ltd. *v.* Flockhart.

Viscount Caldecote, L.C., Lord Russell of Killowen, Lord Wright and Lord Romer. 19th March, 1940.

Workmen's Compensation—Medical Referee—Ambiguous Certificate—Incapacity due partly to Accident and partly to outside Cause—Duty of Referee to make clear Proportion of Earning Incapacity due to Accident alone.

Appeal from a decision of the Court of Session.

On the 5th March, 1936, a workman, Flockhart, who was employed by Edinburgh Collieries Co., Ltd., as a machineman, met with an accident arising out of, and in the course of, his employment, being totally incapacitated for a time, and compensated on that basis. On the 13th April, 1936, a reference was made to a medical referee at the employers' instance under s. 19 (2) of the Workmen's Compensation Act, 1925. On the 16th April the referee certified that the workman was still unfit, and compensation was continued at the full rate until the 30th July, 1936, when he was given light work, being paid compensation as for partial incapacity at £1 1s. a week until the 8th March, 1937, when the employers again applied for reference to a medical referee. On the 19th March, the referee certified that the workman was then "fit for any form of surface work," and that his "incapacity" was "largely due to his own mental attitude." On the 31st March the Sheriff-Substitute remitted the matter to the referee asking him to amend his certificate by stating specifically (*a*) whether the workman had wholly or partially recovered from the injury by accident, and (*b*) whether the incapacity due to the accident had ceased, or to what extent, if any, the workman's incapacity was due to the accident. The referee thereupon amended his certificate by adding the findings about the workman that he had not yet wholly recovered, and that 25 per cent. of his incapacity was due to his accident. The Sheriff-Substitute on that finding awarded the workman compensation at 6s. a week from the 8th March, 1937. He arrived at that sum by taking the difference between the workman's pre- and post-accident wages, which was £2 2s., on which the compensation payable would normally be £1 1s. a week; and he would have awarded 25 per cent. of that sum, proceeding on the referee's certificate, had the employers not offered 6s. a week. On appeal, the Court of Session (Lord Mackay dissenting) held that the referee's certificate was too ambiguous to form the basis of an award of compensation, the Lord Justice Clerk expressing a desire to know whether the injury by accident causing 25 per cent. of the incapacity would by itself prevent the workman from working underground. (*Cur. adv. vult.*)

Viscount Caldecote, L.C., said that, in a straightforward case, where a total or partial loss of wage-earning power, referred to in ss. 12 and 19 of the Act of 1925 as "incapacity," was the result only of the injury due to the accident, the medical referee would certify accordingly, and the arbitrator would have no difficulty in making his award. The present, however, being a case where other causes intervened to increase or prolong the workman's incapacity, the certificate must make plain for the arbitrator whether the incapacity was due in whole or in part to the accident. The referee had not done that here. He had found a percentage of the workman's total incapacity to be due to the accident. Left to surmise, he (his lordship) would understand that to mean that the workman's condition of ill-health was to the extent of the percentage due to the accident. If that were the meaning, the referee appeared to have left out of consideration the possibility that the workman's incapacity due to his accident might be quite enough to cause the unfitness for work underground. If, on the other hand, the certificate were taken as dealing with loss of earning-capacity, the percentage assessment had no meaning unless it were an invasion of the arbitrator's sphere of duty. The arbitrator was wrong in treating the certificate as justification for the view that the workman was entitled to compensation in respect of only 25 per cent. of his incapacity to earn his former wage. The appeal must be allowed, and the certificate be remitted to the medical referee for the necessary clarification.

The other noble lords concurred.

Counsel: *Erskine Hill* and *Allan Walker*; *Gentles*, K.C., and *Gordon Stott*.

Solicitors: *Beveridge & Co.*, for *W. & J. Burness*, W.S.; *Hy. S. L. Polak & Co.*, for *W. Steele, Nicoll & Co.*, S.S.C.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

Unsworth *v.* Elder Dempster Lines, Ltd.

Slesser, MacKinnon and Goddard, L.JJ. 23rd January, 1940.

Workmen's Compensation—Workman Injured—Weekly Payments by Employers but no Claim for Compensation—Workman without knowledge of Workmen's Compensation Act—Decision to sue Employers for Negligence—Receipts for Weekly Payments thereafter signed "Without Prejudice"—Right of Election between remedies not lost.

Appeal from a decision of Croom-Johnson, J., at Liverpool Assizes.

The plaintiff, Unsworth, was a dock labourer. On the 8th March, 1938, he was engaged in loading a vessel belonging to the defendant company, and was in the lower hold of that vessel when a beam of the hatch above him, which had been left unbolted, was caught by the hook of the crane and fell on him, injuring him. The plaintiff received from the company compensation at the rate of half his average weekly earnings, and signed a receipt each week. In August, 1938, he consulted a solicitor, who wrote a letter to the shipping company claiming damages on behalf of his client. Thereafter he continued to receive compensation from the company, but signed his receipts "without prejudice." The company contended that the plaintiff had elected to receive compensation under the Workmen's Compensation Act, 1925, and that his claim for damages was barred by s. 29 (1) of that Act. Croom-Johnson, J., found as a fact that until he consulted his solicitor the plaintiff was ignorant of the Workmen's Compensation Act, or that he had a right to elect between claiming compensation under that Act and damages, or that he had any right to claim damages at all. The judge dismissed the plaintiff's action, but assessed the damages at £621 9s. The plaintiff appealed.

Slesser, L.J., said that it had been decided in the Court of Appeal in two recent cases, *Perkins* v. *Hugh Stevenson and Sons, Ltd.* [1940] 1 K.B. 56; 83 Sol. J. 655; and *Selwood* v. *Towneley Coal & Iron Co., Ltd.* [1940] 1 K.B. 180; 83 Sol. J. 780, that, where a workman had either claimed compensation under the Act and been paid it, or had accepted payments of compensation sent by his employers without having made any claim, the employers could not be held liable in damages at common law. On the other hand, it had been held in *Oliver* v. *Nautilus Steam Shipping Co., Ltd.* [1903] 2 K.B. 639, that, where a workman received payments from his employer which were not made under the Act or were not received as such, the statutory provision did not operate. In the present case there was no doubt that the employers made the payments as compensation under the Act, but he (his lordship) could find no evidence that the workman received them as such. That was the position until the workman consulted his solicitor. After that time, considering the circumstances as a whole, he entertained no doubt that the proper inference was that it was agreed by

the employers that the workman should take the money without prejudice to his rights at common law. The words "without prejudice" were held in the last-mentioned case to protect the workman. Counsel for the company had sought to distinguish that case, but, in his (his lordship's) view, the words also in the present case prevented the workman from losing his right of election under the Act. The appeal must be allowed.

COUNSEL: *Clothier*, K.C., and *Turner-Samuels*; *Lynskey*, K.C., *Shawcross*, K.C., and *C. N. Shawcross*.

SOLICITORS: *Silverman & Livermore*; *Forwood, Williams and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Brackenborough *v.* Spalding Urban District Council.

Slesser, MacKinnon and Goddard, L.JJ.
25th January, 1940.

MARKETS AND FAIRS—NEGLIGENCE—MARKET OWNED BY LOCAL AUTHORITY—CATTLE DRIVEN INTO PEN BY FARMER'S SERVANTS—ESCAPE OF STEER—INJURY TO FARMER'S SERVANT—NO CONTROL OF ANIMALS BY LOCAL AUTHORITY—LIABILITY.

Appeal from a decision of Cassels, J., at Lincoln Assizes.

The plaintiff was the widow of one, Brackenborough, a farm-foreman employed by a cattle-breeder. On the 12th April, 1938, Brackenborough went in charge of cattle to Spalding Market where his employer was sending them in order that they might be graded under the Cattle Subsidy Scheme made under the Livestock Industry Act, 1937. Spalding Market was a certification centre under the Livestock Industry Act, 1937. At the market the animals were herded into a pen three sides of which were fixed, while the fourth consisted only of a slack chain. Brackenborough being momentarily absent from the pen, which he left in charge of his assistant and a boy, one of the animals escaped under the chain and made off into the town. During the ensuing chase, Brackenborough was charged by the steer, knocked down and killed. His widow now sued the Spalding Urban District Council as owners of the market, complaining that they had failed in their duty by providing a pen which was not reasonably safe. At the trial, Cassels, J., overruled a submission of no case, and the jury returned a verdict in favour of the plaintiff for £1,500 damages under Lord Campbell's Act, and for £500 damages under the Act of 1934. The judge, in assessing the sum due to the plaintiff, which included an agreed sum as special damages, deducted from the £1,500 both the sum awarded under the Act of 1934 and the agreed value of the deceased's estate. The defendants appealed, and the plaintiff cross-appealed against the deduction of the amount of the deceased's estate from the amount recovered by her under Lord Campbell's Act.

SLESSER, L.J., said that the control and possession of the cattle had never passed out of the hands of their owner. Primarily, if one of them escaped, the person liable would be the person who had control and possession as in *Deen* v. *Davies* [1935] 2 K.B. 282; 79 SOL. J. 381. It was argued, however, that the defendants were liable because they, being the market authority, had invited the farmer to put his beasts into the pen for reward. Guidance was to be derived from *Knott* v. *London County Council* [1934] 1 K.B. 126; 103 L.J.K.B. 100, where a person was bitten by a dog which was kept by a schoolkeeper with the permission of the London County Council. Lord Wright made it clear in that case that the question of liability depended on who had the possession and control of the dog. In the present case the local authority merely provided the pens, and they were under no greater liability if beasts got loose from the pens than if they had not provided any pens at all. Here the farmer retained control of the beasts, and it mattered not whether they had been brought to the market for sale or for grading by the certifying authority. As in *Knott* v. *London County Council*, *supra*, the mere permission of the authority to put the animals where they were did not make the authority responsible for what happened. The learned judge was wrong in leaving the case to the jury, and the appeal succeeded. The cross-appeal would be dismissed.

MACKINNON and GODDARD, L.JJ., agreed.

COUNSEL: *Wallington*, K.C., and *Smallwood*; *Sandlands*, K.C., and *Van Oss*.

SOLICITORS: *J. D. Langton and Passmore*, for *Mellows and Sons*, Peterborough; *Lee, Bolton and Lee*, for *Edmund W. Roythorne*, Spalding.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Re Payne, Poplett and Another *v.* Attorney-General.

Scott, Clauson and Luxmoore, L.JJ.
19th March, 1940.

REVENUE — ESTATE DUTY — VOLUNTARY SETTLEMENT—SETTLOR DIES WITHIN THREE YEARS—VALUATION OF SETTLED PROPERTY FOR ESTATE DUTY—WHETHER TRUST PROPERTY AS IT STOOD AT DEATH OR PROPERTY ACTUALLY SETTLED CHARGEABLE—FINANCE ACT, 1894 (57 & 58 Vict., c. 30), s. 2 (1) (*c*).

Appeal from Simonds, J. (83 SOL. J. 731).

By a voluntary settlement made in January, 1936, for the benefit of his wife and children, the settlor settled certain patent rights and the proceeds of sale thereof. These rights were sold the same day in consideration of £10,000, which was duly paid to the trustees, and of an option to take shares in the M.P. Company. The option was exercised and, under a power in the settlement, the £10,000 was invested in ordinary shares of the M.P. Company. In April, 1936, there was an issue of bonus shares. In 1937 the settlor died. At the date of his death the trust investments had greatly increased in value and were worth nearly £50,000. This summons was taken out by the trustees for the determination of the question whether the settled property to be valued for estate duty was the trust property as it stood at the date of the death or the property put into settlement when it was made. The trustees contended that the property to be valued was £10,000 and the option. Simonds, J., held that the estate duty was to be calculated upon the value at the settlor's death of the assets then held by the trustees of the settlement and that the property so valued must be aggregated with the settlor's other property for the purpose of ascertaining the rate of duty. The trustees appealed.

SCOTT, L.J., in dismissing the appeal, said it seemed to him that whether there was an actual passing under s. 1 of the Finance Act, 1894, or the property was deemed to pass under s. 2, the Act was directed to the nature, state and condition of the property to be valued at the date of the death. It was a percentage of the property at that date which was to be taken by the revenue.

CLAUSON and LUXMOORE, L.JJ., agreed in dismissing the appeal.

COUNSEL: *Cyril King*, K.C., and *Frederick Grant*; *J. H. Stamp*.

SOLICITORS: *Wilkinson, Howlett & Moorhouse*; *Solicitor of Inland Revenue*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—Chancery Division.

In re Blaiberg; Blaiberg and Public Trustee *v.* De Andia Yrarrazaval and Blaiberg.

Morton, J. 28th February, 1940.

WILL—CONSTRUCTION—FORFEITURE CLAUSE—"NOT OF THE JEWISH FAITH"—MEANING—UNCERTAINTY.

The testator, who died in 1909, by the second codicil, made in 1905, to his will, declared that should any child or grandchild of his "marry any person not of the Jewish faith" such child or grandchild should forfeit any interest or share

under his will or any codicil thereto. By a third codicil he gave to each of his grandchildren living at his decease and attaining the age of twenty-one the sum of £100 "provided in any case no marriage as forbidden by me has been contracted." A fourth codicil, made in 1908, provided, in cl. 20, as follows: "I further declare that if any son, daughter or grandchild of mine or the widow of any son of mine shall at any time hereafter . . . cease or fail to profess, or intermarry with any person who shall not profess the Jewish faith, then and in any such case such son, daughter, grandchild or widow shall thereupon and as from that time forfeit and lose all benefits under my said will or any codicil thereto . . ." In 1924 a granddaughter of the testator, who had been born in his lifetime, married a man who, it was understood, was not of Jewish ancestry and who did not profess the Jewish faith. The executors of the testator never paid to her the £100 legacy or interest thereon as they considered that she had forfeited it. In May, 1938, a summons was taken out to determine the validity of the forfeiture clause contained in cl. 20 of the fourth codicil. That summons came before Farwell, J., who held that the phrase who shall "cease or fail to profess or intermarry with any person who shall not profess the Jewish faith" was void for uncertainty. This summons was taken out by the surviving personal representatives of the testator and, as amended, asked whether the condition contained in the second codicil was void for uncertainty and whether it in any way affected or limited the bequests to grandchildren in the third codicil.

MORTON, J., said that passages in the judgment of Farwell, J., on the first summons were helpful. He had said that the court must be in a position to say whether or not some particular act created a forfeiture. It had seemed to Farwell, J., that the words "cease or fail to profess" were capable of many meanings and in many cases it would be impossible to determine with any certainty whether or not a person had ceased or failed to profess. The clause which had now to be construed was more difficult than that before Farwell, J. Whether or not a person was of the "Jewish faith" was something which lay in his or her own conscience and was a matter of belief. The court might ascertain by evidence what were the beliefs which made a man of the Jewish faith, but the further question whether or not he held those beliefs and really believed them was not a matter which the court could ascertain with certainty. If, he held, the condition was valid, he would have to direct an inquiry as to whether the man the granddaughter married in 1924 was then of the Jewish faith. That was not an inquiry which the court would undertake. It was not easy to see in what sense these words had been used. If they were used in the sense which he had indicated, the matter was far too uncertain for the court to give any effect to them. He accordingly declared that the condition was void for uncertainty.

COUNSEL: *Rawlence; Vaisey*, K.C., and *Bowyer; G. Hewins* (for *Geoffrey Pratt*, on war service).

SOLICITORS: *H. E. Blaiberg; Burton & Ramsden.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Coote; Cavers and Evans *v.* Kaye and Others.

Morton, J. 13th March, 1940.

WILL—CONSTRUCTION—SETTLEMENT OF LAND—BEQUEST OF HEIRLOOMS TO BE ENJOYED WITH THE LAND—FIRST TENANT IN TAIL BY PURCHASE DIES IN LIFETIME OF TENANT FOR LIFE—"ACTUALLY ENTITLED" TO LAND—VESTING OF HEIRLOOMS.

The testator, who died in 1864, devised a mansion house and lands to the use of his eldest son for life with remainder to his sons in tail male with remainder to the testator's second son for life with remainder to his sons in tail with like remainders in favour of after-born sons with ultimate remainders in favour of the respective sons' daughters in tail as tenants in common. He bequeathed certain heirlooms to his trustees, upon trust to permit them to be held and enjoyed by the person who should be "actually entitled" to the mansion house under the limitations of the will, yet so that they should not vest in any person thereby made tenant in tail by purchase unless he should attain twenty-one or die under that age leaving lawful issue. The testator's eldest son died in 1925 without issue. He was succeeded by the second son who died in 1938. He had had three children, a son C, who attained twenty-one and died in 1918, and two daughters who, in the events which had happened, had become entitled as tenants in tail to the mansion house.

This summons was taken out by the trustees of the will asking whether the heirlooms were held on trust for the second son's two daughters, or for C's personal representatives or as part of the testator's residuary personalty.

MORTON, J., said in considering whether C was cut out of the gift of heirlooms, because he did not survive his father and come into possession of the mansion house, he had to bear in mind the long established rule that, where chattels are simply directed to pass as heirlooms with real estate, the first person who, under the limitations of the settlement, becomes entitled to the real estate for a vested estate of inheritance, whether in possession or remainder, becomes absolutely entitled to the chattels. The settlor might insert provisions defeating the interest of a tenant in tail, who did not come into actual possession of the property, but words which were to have this effect must be reasonably clear and certain (*Foley* v. *Burnell* (1783), 1 Bro. C.C. 274; *Lord Scarsdale* v. *Curzon* (1860), 1 J. & H. 40; *In re Parker* [1910] 1 Ch. 581). In the absence of clear words to the contrary, C became on his birth absolutely entitled to the chattels. He was excluded if he did not attain twenty-one. The testator had inserted no provision requiring him to enter into actual possession. The words used were "actually entitled." It was difficult to give to the words "actually entitled" any different meaning than that to be given to the word "entitled" used alone. There was no reference here to possession, as there was both in *In re Angerstein* [1895] 2 Ch. 883, and *In re Fothergill's Estate* [1903] 1 Ch. 149. Applying the general rule in the present case, he held that C, as he was the first tenant in tail by purchase and had attained the age of twenty-one years, had became absolutely entitled to the heirlooms.

COUNSEL: *Andrewes Uthwatt; E. Bagshawe; G. A. Rink; H. Rose; E. J. Heckscher; G. Russo.*

SOLICITORS: *Evelyn, Jones & Co.*, for *Jackson & Sons*, Fordingbridge; *Baileys, Shaw & Gillett.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Royce; Turner *v.* Wormald.

Simonds, J. 19th March, 1940.

WILL—CONSTRUCTION—BEQUEST FOR BENEFIT OF PARISH CHOIR—LEGALITY—ADVANCEMENT OF RELIGION—GENERAL CHARITABLE INTENTION.

The testator, who died in 1938, gave a number of charitable legacies including a legacy of £1,000 to the vicar and churchwardens of the Parish of Oakham for the benefit of the choir. He also gave one-fifth of his residuary estate to them for the same purpose. The one-fifth was estimated to be of the approximate value of £12,000. The other four-fifths of the residue were also given to charity. This summons was taken out to determine whether the bequests were valid charitable bequests and whether a general charitable intention was shown by the will, so that any surplus funds should be applied *cy près*.

SIMONDS, J., having held that the gift was not a gift either for the maintenance of the fabric of the church or to the individual members of the choir personally, but was a gift for the maintenance of the musical services of the church, said: There would be no doubt that this was a charitable

bequest but for the statement of Lord Hardwicke, in *Attorney-General* v. *Oakaver* (1736), referred to in *Attorney-General* v. *Whorwood* (1750), 1 Ves. Sen. 535, where he said that it was contrary to the constitution to have choirs in parish churches. It was impossible to hold to-day, having regard to the constitution of the Church of England and modern practice, that there was any illegality in having choristers or a choir in a parish church. Accordingly, the gift was a good charitable bequest, as it was a bequest for the advancement of religion in a particular way. The further question arose whether the testator had shown a general charitable intention or only a particular charitable intention, so that any surplus income not required for the choir would pass to the next-of-kin. His lordship held that the form of the gift showed a general charitable intention for the advancement of religion generally. So far as the fund was not required for the purposes of the choir, it must be applied *cy près* and he directed a scheme in chambers.

COUNSEL: *C. D. Myles; Vaisey*, K.C., and *H. E. Salt; Roxburgh*, K.C., and *R. W. Goff; H. H. King; Andrewes Uthwatt.*

SOLICITORS: *Peacock & Goddard*, for *Adam & Dalton*, Oakham, and for *G. Stevenson & Son*, Leicester; *Horne and Birkett; The Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Taylor; Midland Bank Executor & Trustee Company, Ltd. *v.* Smith.

Farwell, J. 5th April, 1940.

WILL—CONSTRUCTION—FUND BEQUEATHED FOR BENEFIT OF BANK STAFF—VOLUNTARY ASSOCIATION—VALIDITY.

The testator, who died in 1938, directed his trustees to stand possessed of his residuary estate and the investments representing it "in trust for the Midland Bank Staff Association Liverpool and District Centre 'Edgerley Taylor Fund' absolutely to be added to the sums already presented for the constitution of such fund and to be administered according to the constitution and rules approved and adopted at a general meeting of the said association in the year 1932 or any amendment thereof." The constitution of this fund provided that the object of the fund was to render financial assistance to past and present members of the staff of a bank and their dependents, who might be in genuine difficulties through sickness or other misfortune; to promote the efficiency of the staff; to foster the development of the social activities and recreation among the staff and to promote the general welfare of the staff of the bank. The fund was to be governed by a committee consisting of certain bank officials and elected members, and the constitution further provided for the holding of the trust property by trustees. This summons was taken out by the trustees of the will to have it determined whether the residuary gift to the staff association was a valid bequest or failed for uncertainty.

FARWELL, J., said that while some of the trusts declared by the constitution of the fund were charitable some were not. The fund as a whole was not held upon charitable trusts. As a matter of construction this was a gift for the purposes of the fund to be held by the trustees in accordance with the rules of the constitution. It might be difficult to ascertain who were the past and present members of the staff of the Midland Bank, but it was possible to do so. This case was covered by the decision in *In re Clark* [1901] 2 Ch. 110, which showed that, where you have a gift to an unincorporated body of persons and there is nothing in the rules or constitution of that body of persons which prevents them from using the fund so given to them in any way they please, either by applying capital or income to any of the purposes of the fund or by putting an end to the fund altogether and distributing the money between the members themselves, the gift is valid. The fact that there might be some difficulty in construing the exact meaning of the rules of such an association was not a matter which could affect the validity or otherwise of the gift itself. This gift was a gift to a particular unincorporated body of persons joined together in the form of an association. The association could come to an end at any time and divide up the fund. In these circumstances the gift was a valid and effectual gift.

COUNSEL: *Neville Gray*, K.C., and *G. Maddocks*, for the plaintiffs; *C. E. Harman*, K.C., and *E. Ackroyd*, for the first two defendants; *Vaisey*, K.C., and *Guest Mathews*, for the third defendant; *C. R. R. Romer*, K.C., and *Denys B. Buckley*, for the fourth and fifth defendants.

SOLICITORS: *H. E. Quick; Norris, Allens & Co.; W. P. Davies & Son; Fowler, Legg & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—King's Bench Division.

Canter *v.* J. Gardner & Co., Ltd. and Others.

Tucker, J. 14th December, 1939.

NEGLIGENCE—INVITOR AND INVITEE—CONSTRUCTION OF BUILDING—HEAD CONTRACTOR—PLAINTIFF INJURED BY FALLING INTO HOLE IN PART OF PREMISES CONTROLLED BY SUB-CONTRACTOR—HEAD CONTRACTOR NOT LIABLE—HOLE LEFT SAFE BY SUB-CONTRACTOR—SUBSEQUENTLY RENDERED UNSAFE BY UNKNOWN AGENT—SUB-CONTRACTOR NOT LIABLE.

Action for damages for personal injuries.

The second defendants, Demolition & Construction Co., Ltd., were the main contractors for the erection of a block of flats in London. The plaintiff was a workman employed by one of the sub-contracting companies at work on the premises. In November, 1938, while lawfully walking through the building, he fell into a hole in the floor and received the injuries for which he brought the present action. The hole was under the control of the first defendants, who were sub-contractors engaged in connection with the ventilating system. When left by them it was filled up by a length of trunking standing vertically in it and consequently safe. Subsequently, in circumstances which were not explained, the trunking was removed and the hole was left exposed, which caused the plaintiff's accident.

TUCKER, J., said that, although head contractors were generally in the position of invitors to the workmen of sub-contractors working on the premises, they ceased to be in that position when any part of the premises was given into the exclusive control of the sub-contractors who were working there. If, however, the head contractors' duty did not cease as he (his lordship) had held, still there was no duty on the head contractors to go round inspecting the work of every sub-contractor which was not obviously dangerous. With regard to the sub-contractors, he accepted that the hole had been left safe by their employees. He could not persuade himself that their duty was so high as to require that they should pay a daily visit of inspection. The action failed against both defendants.

COUNSEL: *Caplan* (for *Fox-Andrews*, on war service); *Berryman; Maxwell Fyfe*, K.C., and *B. L. A. O'Malley.*

SOLICITORS: *Rowley, Ashworth & Co.; Carpenters; William Easton & Sons.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Wimborne and Cranborne Rural District Council *v.* East Dorset Assessment Committee.

Lord Hewart, C.J., Hilbery and Hallett, JJ. 18th January, 1940.

RATING AND VALUATION—"AGRICULTURAL LAND"—FIELD PART OF FARM USUALLY USED FOR GRAZING CATTLE—OCCASIONAL USER FOR MOTOR-CYCLE RACING—PAYMENT TO OCCUPIER—NOT "LAND USED AS A RACECOURSE"—RATING AND VALUATION (APPORTIONMENT) ACT, 1928 (18 & 19 Geo. 5, c. 44), s. 2 (2).

Appeal by case stated from a decision of Dorset Quarter Sessions.

One field of the eleven fields forming the land of a farm at Corfe Mullen, Dorset, was usually used by the farmer in connection with his farming business, but on two afternoons in 1937 and on four afternoons in 1938 he allowed it to be used by a club for motor-cycle racing. The programme of the club described the grass-track on which the racing took place as a "course." A charge of 1s. was made for admission, and there were additional charges for parking in the adjoining field. The club received gate-money amounting to £356 after allowing for tax. The money received was spent on prizes and general expenses. The track was marked out by fencing which the farmer erected with the assistance of the members of the club. He was paid 10s. per 100 spectators, receiving £42 14s. in 1938. The respondent rural district council, having made a proposal for the inclusion of the field as a hereditament in the valuation list in which the farm, being an agricultural hereditament, did not appear, the appellant assessment committee rejected the proposal. The council appealed to quarter sessions, contending that the field was occupied and used as a racecourse; that it was not land used as pasture only; that it was not agricultural within s. 2 (2) of the Rating and Valuation (Apportionment) Act, 1928; and that it was a separately rateable hereditament. Quarter sessions having accepted those contentions and made the necessary consequential order, the assessment committee now appealed. By s. 2 (2) of the Act of 1928 "'agricultural land' means any land used as arable meadow or pasture ground only . . . but does not include . . . land used as a racecourse. . . ."

LORD HEWART, C.J., said that counsel for the respondents had contended that the question at issue was one of fact and quarter sessions' decision one which the court could not disturb. That was too superficial a view of the question. Section 2 (2) could not fairly be interpreted as meaning that the land was taken out of the general provisions with regard to agricultural land if it were on particular and comparatively rare occasions used for the purposes of a racecourse. It had been argued for the committee that the words "land used as a racecourse" must be construed as meaning land used as a racecourse for horse-racing. That was too narrow a view. It was impossible to accept the argument that, because the racing in question was by means of motor-cycles, therefore the land could not possibly be described as "land used as a racecourse." The facts must be looked at fairly and fully in order to ascertain the true inference to be drawn from them. The assessment committee had come to the conclusion that the assessment proposed ought to be cancelled because in their view "the very occasional user for the purpose of motor-cycle racing is not sufficient to take the hereditament out of the category of agricultural land as defined by the Act." It was apparent, therefore, on the face of the case, that the real, substantial and normal user of the field, in common with the other ten fields which made up the farm, was for the pasturing of cattle and the business of a farm. Was it right to take the occasional and exceptional use as something which denoted and described the true use of that land? In substance the point raised in *Jarvis* v. *Cambridgeshire Assessment Committee* ((1939), 37 L.G.R. 37; 82 SOL. J. 990) was the same as the present.

COUNSEL: *Montgomery*, K.C., and *Squibb*; *Scott Henderson*.

SOLICITORS: *Barnes & Butler*, for *J. W. Miller & Son*, Poole; *Peacock & Goddard*, for *Luff, Raymond & Williams*, Wimborne.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Shop Investments, Ltd. *v.* Sweet.

Wrottesley, J. 31st January, 1940.

REVENUE—INCOME TAX—LEASE OF THEATRE FURNISHED—RENT IN EXCESS OF ANNUAL VALUE AS ASSESSED UNDER SCHED. A—AMOUNT OF RENT ATTRIBUTABLE TO FURNITURE ALONE ASSESSABLE UNDER SCHED. D—APPORTIONMENT—INCOME TAX ACT, 1918 (8 & 9 Geo. V, c. 40), Scheds. A, D.

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The appellant company carried on the business of acquiring properties, modernising them, and then selling or leasing them. They had at no time equipped buildings for the purpose of letting premises furnished. In September, 1934, they wished to acquire a theatre, but the only terms on which they could do so was by paying the existing lessees of the theatre a certain sum in cash and then granting them a lease for forty-two years. Ultimately the owners sold the theatre to the lessees for £25,500, the latter re-selling it to the appellants for £29,500, and the appellants leasing it back to the lessees for forty-two years at £2,285 a year. The appellants duly purchased the property, "together with the fittings, fixtures, carpets, upholstery, plant, electric light fittings and all other the machinery, apparatus and fixtures in the cinema or upon the premises," and granted the lease stipulated. The company were assessed to income tax under Sched. D to the Income Tax Act, 1918, for the years 1935–36, 1936–37, and 1937–38, in respect of the profits received by them from that letting, although in computing those profits the annual value of the property as assessed under Sched. A was allowed as a deduction. The company appealed against the assessments, contending that the whole of the profit arising to them in respect of the Hounslow Empire was chargeable and had been charged under Sched. A, and that they could not lawfully be assessed under Sched. D for any amount by which the assessments under Sched. A might be insufficient to cover that profit; alternatively, that if they had made a profit from letting fixtures and fittings, that profit must, for purposes of assessment under Sched. D, be separated from the profit made by letting the premises themselves, which separation could only be effected properly by estimating what part of the total rent of £2,285 was attributed by the parties to the fittings and fixtures. It was contended for the Crown, *inter alia*, that the profits arising from letting the premises fully equipped and furnished were distinct from those which the appellant company as landlords derived from their property in the premises. The Special Commissioners were of opinion on the evidence before them that, on the authority of *Windsor Playhouse, Ltd.* v. *Heyhoe*, 17 Tax Cas. 481, the assessments made under Sched. D should be affirmed as having rightly been made to include the rent received under the lease. The company now appealed.

WROTTESLEY, J., said that the Crown's method assumed that the whole of the rent exceeding the annual value as assessed under Sched. A was profit arising from the fact that the premises were furnished. The liability of an unfurnished hereditament to tax was exhausted by the assessment under Sched. A (*Fry* v. *Salisbury House Estate, Ltd.* [1930] A.C. 432; 74 SOL. J. 232). The proper course to take if, with a taxed hereditament, something else were included in the demise, appeared from *Whelan* v. *Alfred Leney & Co., Ltd.* [1936] A.C. 393; 80 SOL. J. 284, in which the House of Lords appeared to have applied the law as they had laid it down in *Fry* v. *Salisbury House Estate, Ltd.*, *supra*. The composite rent must be disintegrated, for only so was it possible to be sure of not doing what *Fry* v. *Salisbury House Estate, Ltd.*, *supra*, forbade—namely, to fill in the gap between the assessment under Sched. A and the rent actually received in the year of assessment. By separating the element in the composite rent which related to the hereditament from that part which was due to the fact that the hereditament contained furniture, equal treatment of all taxpayers was secured. If the demise included goodwill or other rights, or entitled the tenant to services, there again was a subject for apportionment. *Windsor Playhouse, Ltd.* v. *Heyhoe*, *supra*, would not have been decided as it was had Finlay, J., had the guidance of *Whelan* v. *Alfred Leney & Co.*, *supra*. The appeal must

therefore be allowed and an inquiry made similar to that directed in *Loughnan* v. *Marston's Dolphin Brewery, Ltd.* [1936] A.C. 393; 80 SOL. J. 284.

COUNSEL: *King*, K.C., and *Bucher*; *The Solicitor-General* (Sir Terence O'Connor, K.C.), *R. P. Hills* and *P. H. T. Rogers*.

SOLICITORS: *Wigram & Co.*; *The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to the 20th April, 1940.)*

Progress of Bills.

House of Lords.

Agricultural Wages (Regulation) Amendment Bill [H.C.].
Read Second Time. [16th April.
Evidence and Powers of Attorney Bill [H.L.].
Read First Time. [23rd April.
Societies (Miscellaneous Provisions) Bill [H.C.].
Read Second Time. [18th April.

House of Commons.

Agricultural Wages (Regulation) (Scotland) Bill [H.C.].
Read Second Time. [17th April.
Solicitors (Emergency Provisions) Bill [H.L.].
Read Third Time. [4th April.
Special Enactments (Extension of Time) Bill [H.L.]
Read Third Time. [9th April.

Statutory Rules and Orders.

Nos. 545 & 555. **Customs.** The Import Duties (Drawback) (Nos. 4 & 5) Orders, dated April 18.

No. 563. **Emergency Powers (Defence).** General Regulations. Order in Council, dated April 17, amending Regulations 35, 56, 62 and 69 of, and adding Regulation 47C to the Defence (General) Regulations, 1939.

No. 566. Emergency Powers (Defence). The Employment of Aliens in British Ships Order, dated April 17.

Nos. 546, 556 & 557. Emergency Powers (Defence). The Control of the Cotton Industry (Nos. 5, 6 & 7) Orders, dated April 12.

No. 568. Emergency Powers (Defence). Food. General Licence, dated April 17.

No. 583. Emergency Powers (Defence). The Lighting (Restrictions) (Amendment) Order, dated April 17.

No. 565. Emergency Powers (Defence). The Control of Mercury (No. 4) Order, dated April 16.

No. 552. Emergency Powers (Defence). Navigation Order (No. 5), dated April 10.

No. 561. Emergency Powers (Defence). The Piece-Goods and Made-Up Goods (Cotton, Rayon and Linen) Order, dated April 16.

No. 586. Emergency Powers (Defence). The Railways (Additional Charges) Order, dated April 17.

No. 585. Emergency Powers (Defence). The Killing and Taking of Rooks Order, dated April 17.

No. 587/S.22. **Mental Deficiency and Lunacy, Scotland.** The Mental Deficiency (Scotland) Act (General Board's) Regulations, dated March 29, and approved on April 5.

No. 554. **Prize Courts.** The Sierra Leone Prize Courts (Fees) Order in Council, dated April 5.

No. 564. **Road Traffic and Vehicles.** The Motor Vehicles (Authorisation of Special Types) Order (No. 2), dated April 3.

No. 543. **Safeguarding of Industries** (Exemption) (No. 6) Order, dated April 11.

No. 569. **Unemployment Insurance** (Increase of Benefit in Respect of Dependent Children) Order, dated April 5.

Provisional Rules and Orders.

Poor Law, England. Public Assistance. Institutions. Hospitals. Children's Homes. Officers. Provisional Regulations, dated April 16.

Poor Law, England. Relief. Provisional Regulations, dated April 16.

Road Traffic and Vehicles. The Motor Vehicles (Variation of Speed Limit) Provisional Regulations, dated April 1.

Non-Parliamentary Publications.

INLAND REVENUE.

Sur-Tax Tables.

MINISTRY OF LABOUR AND NATIONAL SERVICE.

National Service (Armed Forces) Act, 1939. Selected Decisions given by the Umpire in respect of applications for postponement of Liability to be called up for Service in the Armed Forces of the Crown during the month of February, 1940. (N.S. Code 2) Pamphlet 2/40.

MINISTRY OF SHIPPING.

Merchant Shipping. List of the Principal Acts of Parliament, Regulations, Orders, Instructions, Notices, etc., relating to Merchant Shipping issued prior to January 1, 1940.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders. Supplement 16, dated April 17.

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. WALTER JOHN JOSEPH (Registrar of the East Dereham, Great Yarmouth, Harleston, North Walsham and Norwich County Courts) to be the Registrar of Wymondham County Court, and Mr. THOMAS MASON ASHTON (Registrar of the Bury St. Edmunds and Thetford County Courts) to be Registrar of Sudbury County Court.

Notes.

The directors of Equity & Law Life Assurance Society announce that they have appointed Mr. Lewis G. Whyte, F.F.A., to be Investment Manager of the Society as from 1st May next.

The next quarterly meeting of the Lawyers' Prayer Union is to be held on Tuesday, the 7th May, in the Council Chamber of The Law Society, at 6.15 p.m., preceded by half-an-hour for tea. An address is to be given by Pastor A. Schultes on "Religious Persecution under Nazi Régime."

The accounts of the Guarantee Society, Ltd., for 1939 show premiums received of £76,004 (against £76,470 in 1938). The credit balance on profit and loss account, after providing for all claims paid and outstanding, together with other outgoings, amounts to £19,866 (against £21,355 in 1938). A dividend of 17s. 6d. per share, less tax (same), has been declared.

The directors of the Alliance Assurance Company, Ltd., have resolved to declare at the Annual General Court, to be held on the 15th May next, a dividend of 18s. per share (less income tax) out of the profits and accumulations of the company at the close of the year 1939. An interim dividend of 8s. per share (less income tax) was paid in January last, and the balance of 10s. per share (less income tax) will be payable on and after the 5th July next.

According to *The Times*, in a case in the Court of Appeal on Wednesday it was contended that the word "immediately" in subs. (4) of s. 1 of the Courts (Emergency Powers) Act, 1939, meant "temporarily," and that the section only gave the court jurisdiction where a debtor was only temporarily embarrassed. The court said that they were not prepared to take such a narrow view of the section or to construe the word "immediately" in the way suggested by the argument.

On the 29th March, at the Manchester City Police Court, before the Stipendiary (Mr. Wellesley-Orr), Mr. J. H. Smith, carrying on business as Messrs. Smith & Smith, Incorporated Accountants, 185a, Hyde Road, Gorton, Manchester, 18, appeared on two summonses under s. 49 of the Solicitors Act, 1932, for taking instructions for and drawing certain papers upon which to found a grant of probate contrary to the provisions of the Act. Mr. B. Ormerod, barrister-at-law, Manchester, instructed by Mr. H. G. W. Cooper, solicitor, Burnley, prosecuted on behalf of The Law Society on the complaint of the Burnley District Incorporated Law Society. The facts of the case were shortly as follows: Mr. J. H. Smith had taken instructions for and prepared certain papers to lead to grant of probate and had deposited such papers at the Probate Registry at Manchester and had later rendered

a bill for £10 10s. in respect of such work. Two summonses were issued against the defendant, the first for taking instructions and the second for drawing the papers. Mr. Arthur Moon, solicitor, Manchester, appeared for the defendant and on his behalf admitted the offence and in extenuation stated the defendant was quite unaware that he was committing any offence and regretted he had done so. He was prepared to give an undertaking that such offence would not be repeated. The defendant was further prepared to indemnify the prosecutor in connection with the costs. In consideration of this, Mr. Ormerod asked the learned Stipendiary for leave to withdraw the summonses. Leave was granted on those terms. The defendant has since paid the full costs of the Society.

SUMMER ASSIZES.

The following days and places have been fixed for holding the Summer Assizes :—

OXFORD CIRCUIT (Lewis, Hallett, JJ.).—Monday, 20th May, at Reading; Saturday, 25th May, at Oxford; Saturday, 1st June, at Worcester; Thursday, 6th June, at Gloucester; Thursday, 13th June, at Newport; Thursday, 20th June, at Hereford; Tuesday, 25th June, at Shrewsbury; Wednesday, 3rd July, at Stafford.

SOUTH-EASTERN CIRCUIT (Hilbery, J.).—Saturday, 18th May, at Huntingdon; Wednesday, 22nd May, at Cambridge; Tuesday, 28th May, at Bury St. Edmunds; Saturday, 1st June, at Norwich; Saturday, 8th June, at Chelmsford. (Cassels, J.).—Tuesday, 18th June, at Hertford; Saturday, 22nd June, at Maidstone; Wednesday, 3rd July, at Kingston; Saturday, 8th July, at Lewes.

NORTH-EASTERN CIRCUIT (Charles, Stable, JJ.).—Tuesday, 4th June, at Newcastle; Saturday, 15th June, at Durham; Monday, 24th June, at York; Monday, 1st July, at Leeds.

WESTERN CIRCUIT (Hawke, J.).—Tuesday, 21st May, at Salisbury; Tuesday, 28th May, at Dorchester; Tuesday, 4th June, at Wells; Tuesday, 11th June, at Bodmin. (Hawke, Lawrence, JJ.).—Wednesday, 19th June, at Exeter; Saturday, 29th June, at Bristol; Tuesday, 9th July, at Winchester.

NOTICE TO CONTRIBUTORS.

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All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

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Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
April 29	Andrews	Jones	More
,, 30	Jones	Ritchie	Reader
May 1	Ritchie	Blaker	Andrews
,, 2	Blaker	More	Jones
,, 3	More	Reader	Ritchie
,, 4	Reader	Andrews	Blaker

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT Non-Witness.	MR. JUSTICE SIMONDS.	MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE MORTON.
	Mr.	Mr.	Mr.	Mr.
April 29	Ritchie	Andrews	Reader	Blaker
,, 30	Blaker	Jones	Andrews	More
May 1	More	Ritchie	Jones	Reader
,, 2	Reader	Blaker	Ritchie	Andrews
,, 3	Andrews	More	Blaker	Jones
,, 4	Jones	Reader	More	Ritchie

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 9th May, 1940.

	Div. Months.	Middle Price 24 Apl. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108¼	3 13 11	3 7 1
Consols 2½%	JAJO	74	3 7 7	—
War Loan 3% 1955–59	AO	100	3 0 0	3 0 0
War Loan 3½% 1952 or after	JD	100⅞	3 9 5	3 8 4
Funding 4% Loan 1960–90	MN	110	3 12 9	3 6 2
Funding 3% Loan 1959–69	AO	96¾	3 2 0	3 3 5
Funding 2¾% Loan 1952–57	JD	97	2 16 8	2 19 7
Funding 2½% Loan 1956–61	AO	90¾	2 15 1	3 2 2
Victory 4% Loan Av. life 21 years	MS	109	3 13 5	3 7 10
Conversion 5% Loan 1944–64	MN	108¼	4 12 4	2 9 2
Conversion 3½% Loan 1961 or after	AO	100	3 10 0	3 10 0
Conversion 3% Loan 1948–53	MS	100¼	2 19 8	2 18 5
Conversion 2½% Loan 1944 49	AO	97¾	2 11 1	2 15 8
National Defence Loan 3% 1954–58	JJ	100¼	2 19 8	2 19 2
Local Loans 3% Stock 1912 or after	JAJO	86½	3 9 4	—
Bank Stock	AO	336½	3 11 4	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	81½	3 7 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87	3 9 0	—
India 4½% 1950–55	MN	110	4 1 10	3 6 1
India 3½% 1931 or after	JAJO	94½	3 14 1	—
India 3% 1948 or after	JAJO	81½	3 13 7	—
Sudan 4½% 1939–73 Av. life 27 years	FA	108	4 3 4	4 0 2
Sudan 4% 1974 Red. in part after 1950	MN	104	3 16 11	3 11 1
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	3 4 8
L.P.T.B. 4½% "T.F.A." Stock 1942–72	JJ	103½	4 6 11	2 3 4
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	91	2 14 11	3 4 7
COLONIAL SECURITIES				
*Australia (Commonw'th) 4% 1955–70	JJ	104⅓	3 16 7	3 12 1
Australia (Commonw'th) 3¼% 1964–74	JJ	91½	3 11 0	3 14 0
Australia (Commonw'th) 3% 1955–58	AO	89½	3 7 0	3 16 4
*Canada 4% 1953–58	MS	107½	3 14 5	3 5 8
*Natal 3% 1929–49	JJ	99	3 0 7	3 2 8
New South Wales 3½% 1930–50	JJ	97½	3 11 10	3 16 5
New Zealand 3% 1945	AO	95½	3 2 10	4 0 2
Nigeria 4% 1963	AO	106	3 15 6	3 12 2
Queensland 3½% 1950–70	JJ	96½	3 12 6	3 13 10
*South Africa 3½% 1953–73	JD	100	3 10 0	3 10 0
Victoria 3½% 1929–49	AO	97½	3 11 10	3 16 5
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84½	3 11 0	—
Croydon 3% 1940–60	AO	93½	3 4 2	3 9 1
*Essex County 3½% 1952–72	JD	102	3 8 8	3 6 2
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Leeds 2½% 1958–62	JJ	97½	3 6 8	3 8 3
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	96	3 12 11	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	70	3 11 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	82	3 13 2	—
*London County 3½% Consolidated Stock 1954–59	FA	102	3 8 8	3 6 4
Manchester 3% 1941 or after	FA	84	3 11 5	—
Manchester 3% 1958–63	AO	94	3 3 10	3 7 7
Metropolitan Consd. 2½% 1920–49	MJSD	97	2 11 7	2 17 3
Metropolitan Water Board 3% "A" 1963–2003	AO	86	3 9 9	3 11 1
Do. do. 3% "B" 1934–2003	MS	87	3 9 0	3 10 4
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 2
Middlesex County Council 3% 1961–66	MS	94	3 3 10	3 7 0
*Middlesex County Council 4% 1952–72	MN	103½	3 17 4	3 13 2
* Do. do. 4½% 1950–70	MN	108	4 3 4	3 12 2
Nottingham 3% Irredeemable	MN	83	3 12 3	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	102½	3 18 1	—
Gt. Western Rly. 4½% Debenture	JJ	111	4 1 1	—
Gt. Western Rly. 5% Debenture	JJ	122½	4 1 8	—
Gt. Western Rly. 5% Rent Charge	FA	116	4 6 2	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	113	4 8 6	—
Gt. Western Rly. 5% Preference	MA	99½	5 0 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.